paragraph 15 leave no doubt that the question of solvency can only arise at the date of distribution.

This proviso must thus be read, as a proviso normally is read, as a variation of the prior provision securing the interests of orphan grandchildren, and thus further defining the class of beneficiaries taking at once and at the only date of vesting.

The answers to the questions set out are that paragraph 14 is not void for remoteness or uncertainty, nor yet inoperative, but the persons entitled under paragraphs 12 and 14 are to be ascertained at the date of distribution.

Order accordingly.

REX v. LIM KIAN SOO.

[App. Crim. Juris. (Murray-Aynsley, C.J., Evans and Storr, JJ.) July 6, 1950]

[Singapore — Special Case No. 2 of 1950]

Road Traffic Ordinance, 1941, s. 48(2) — Disqualification of driver unless the Court for special reasons thinks fit to order otherwise — Nature of discretion.

This was a special case under the Road Traffic Ordinance in which the learned Magistrate asked for guidance on the interpretation of section 48(2) of the Ordinance. This sub-section provides for the punishment of those who use or let others use motor vehicles whilst not covered by third party insurance and after providing for the punishment it added "and a person convicted of an offence under this section shall (unless the Court for special reasons thinks fit to order otherwise . . . . . .) be disqualified etc." In the English case of Whittal v. Kirby (1) which was referred to, the Lord Chief Justice said that "a circumstance peculiar to the offender as distinguished from the offence is not a 'special reason' within the exception".

Held, that there is a discretion given to the Courts and that this should be exercised after taking into consideration the special circumstances of the case. Such a discretion should not be fettered and the Appellate Court should not intervene unless the discretion was not judicially exercised or unless the Magistrate in directing himself ignored some provision of the Ordinance.

Cases referred to :—

(1) *Whittal v. Kirby* (1948) K.B. 194.
(2) *Rex v. Cressan* (1939) N.I. 106.
(3) *Quelch v. Collett* (1948) 1 All E.R. 252.
(4) *Bracegirdle v. Oxley* (1947) 1 K.B. 349.
(5) *Reay v. Young and anor.* (1949) 1 All E.R. 1102.

SPECIAL CASE.

E. P. Shanks for the Crown.

M. Abraham for the accused.

Murray-Aynsley, C.J. : — This is a special case under the Road Traffic Ordinance, No. 17 of 1941. The learned Magistrate seeks guidance on the interpretation of part of section 48(2). This sub-section provides for the punishment of those who use or let others use motor vehicles whilst not covered by third party insurance. After providing in the usual way for fine and imprisonment the Ordinance adds "and a person convicted of an offence under this section shall (unless the Court for special reasons thinks fit to order otherwise . . . . .) be disqualified etc." A similar discretion is given to Courts in other parts of the Ordinance in similar terms. I think that the same meaning must be given to the words wherever they occur.

The same words are used in Imperial Acts and have received interpretation in the Courts of England, Scotland and Northern Ireland. Unfortunately only the English cases are available here.

The question is fully dealt with in *Whittal v. Kirby*(1). It has to be considered whether this Court should follow that case which is, of course, only of persuasive authority so far as we are concerned.

The gist of the decision is contained in a passage which originally formed part of a lecture given by Lord Goddard to some country justices. It was adopted by the High Court of Northern Ireland in the case of *Rex v. Cressan*(2) which decision had in its turn the approval of Lord Goddard and others sitting in a Divisional Court. "A 'special reason' within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, and one which the Court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a 'special reason' within the exception." (At p. 112).

I personally think that the form in which that statement is made is open to objection. I think that it cuts down the discretion given to Courts when it limits 'special circumstances' in this way. Mitigating circumstances in a case may be of either kind.

In my opinion Courts, when approaching the question, should begin by remembering that if they find the circumstances sufficient in one case they must make a like finding in all like cases.

The word 'special' is the antonym of the word 'general' which would mean the circumstances that would be present in every case under the section. But, if they find circumstances 'special' for the purpose of mitigation which are found in a large percentage of

cases, they are creating exceptions of a general character and it must be assumed that if the legislature had intended that the particular provision should not apply to these common cases it would have said so. Most of the circumstances of a personal character that are usually relied upon are of this kind; *e.g.* that the accused had not offended in that way before, that he is a professional driver, etc.

When a discretion of this kind is given it means that certain uncommon cases may occur which could not be foreseen by the legislature in which that particular kind of punishment is unsuitable or manifestly excessive. Such circumstances will usually be found in the circumstances of the offence. It would be perhaps difficult in dealing with this section to think of circumstances of this kind of a personal character, but it will be seen from decided cases that this has happened. This is illustruated by the case of *Quelch v. Collett*[3]. There the position was that if the accused was convicted there were, on the basis of the earlier decision, no grounds on which the Court could refrain from imposing the period of disqualification, but it was held proper, although an offence was committed, to dismiss the charge under the Probation of Offenders Act, 1907. The accused had a lame leg and had bought a motor vehicle the seller of which had undertaken to get the insurance transferred but had failed to do so. The accused had not taken any steps in the matter. Considering that there is an obligation on the driver of a vehicle to make sure that the vehicle is insured, I should not have thought that this was a case for using the powers under the Probation of Offenders Act. But the point is that the result of the case leaves no intermediate point between no penalty at all and the full period of suspension. I think that this proves that the reasoning in the principal case was too narrow.

The difficulty in England has been that on a case stated which is the only way in which Magistrates' cases ordinarily come to the High Court, the Court can only intervene on points of law. The tendency has been to convert what are really matters of fact into questions of law, *e.g.* the case of *Bracegirdle v. Oxley*[4]. Here the High Court has powers by revision or otherwise to correct lower Courts on questions of fact, and I think, bearing in mind the considerations that I have set out above, the matter should be treated as a question of discretion.

In the circumstances the case should be referred back to the learned Magistrate for the exercise of his discretion.

Evans, J. : — This is a case stated by a Singapore Police Magistrate under the provisions of section 317 of the Criminal Procedure Code which provides for the reservation of points of law by way of a special case submitted to the High Court. There is no clear point of law raised and the Court seems to be asked to revise the decision.

The determination, more particularly referred, seems to be whether some five facts, either separately, or in conjunction, constitute special reasons under section 48(2) of the Road Traffic Ordinance, 1941 (Ordinance 17 of 1941). That section is, in my opinion, intended to confer a discretion upon the Magistrate, to be exercised according to the circumstances of the particular case. No two men's circumstances are alike. This is a discretion primarily exercised by the Court seeing the witnesses and hearing the evidence of all the circumstances rather than on appeal. In a matter of discretion this court on appeal could not properly interfere unless the discretion were not judicially exercised but it might intervene if the magistrate in directing himself ignored some provision of the ordinance. The question for the opinion of this Court is a general one and what the Magistrate seems to seek is an exposition of the law as regards these special reasons. The reference to this court of cases for the purpose of eliciting expositions of Statute law is to be deprecated. This court sits to hear appeals against decisions of lower courts, and to decide them on the findings of fact and the law applicable to the particular case. No statement of law going outside this purpose is of value. It is no business of this court to legislate, and if the legislature has not defined a special reason, nor enumerated them, it is not for this court to do so. On the other hand it has entrusted a discretion to the magistrate which must produce some variation in practice.

In the facts so briefly stated I cannot discover anyone which, in the magistrate's place, I should feel obliged to regard as a special reason in this case. The English case, perhaps, most apposite, on which Counsel for the accused before us to some extent relied, is that of *Reay v. Young and another*[5]. No attempt seems to have been made to prove facts to approximate this case to that. At least there is no finding as to the volume of traffic, nor of the character of the road nor of the position of the trap. This offence was committed at night, a very material variation against the accused.

Such difficulty as there is, seems to have arisen in regard to cases where the English Courts on appeal have held that the magistrates have ignored the clear

provision of the similar sections there, requiring the reasons relied on to be special, in that they had relied on reasons which were clearly general, as applicable to a large class. The case which seems to have occasioned the greatest difficulty and comment is that of *Whittall v. Kirby*[1]. That case decided that the magistrates had no knowledge of any previous motoring convictions against the respondent, and that the retention of a driving licence was essential for obtaining his livelihood, were not special reasons; and it decided no more. If I had to express an opinion, I should agree with that decision entirely for the reasons there given. In this country moreover I should say that the second ground is of even less weight for the labour market is more fluid. Nor does that reason apply to the case before us, where the pecuniary penalty, as in most cases, is the hire of a chauffeur for the period of suspension.

The crux of the difficulty seems to lie in the words which the Lord Chief Justice quoted from his address at the Essex Assizes and which he, and the court, then affirmed, when he said that "a circumstance peculiar to the offender as distinguished from the offence is not a 'special reason'." In this dictum it would seem the words "as distinguished from the offence" must be emphasised and given full effect. Elsewhere at page 199 His Lordship says: "The court cannot but observe with some surprise that considering the man was charged with driving under the influence of drink, the court stopped a police officer from informing them of the convictions recorded against the defendant for being drunk and disorderly. I should have thought that any court would have considered the question whether a man had been convicted of drunkenness on one or more occasions a most material factor in considering whether special reasons existed for refraining from disqualifying him as a motor driver;" and again at page 201, almost immediately after the passage thought to create a difficulty, he says: "It is difficult indeed to visualize any special reason in the case of dangerous driving, except the one actually mentioned in the section itself, namely, the lapse of time from the date of a previous conviction. So, too, it is certainly difficult to visualize what could amount to a special reason in the case of driving under the influence of drink or drugs, though perhaps one might be found if the court was satisfied that a drug had been administered to a driver without his knowledge, as for instance where a driver had taken a dose of medicine which he believed to be an ordinary tonic but which in fact contained a powerful drug." The former is not a circumstance helpful to the accused. Both convictions for drunkenness and the driver's absence of knowledge are essentially matters peculiar to the offender, but both should be considered and both may be regarded as circumstances of the offence in each case contemplated: that is to say, on a charge of driving under the influence of drink, his history of intemperance; and on a charge of driving under the influence of drugs, his ignorance of the nature of his medicine. Read in this way, and in the light of the whole judgment, the words criticised do not seem to me unduly restrictive of the words of the statute.

On the facts found in the case before us I see no reason to interfere with the decision of the magistrate.

Storr, J. : — I have read the judgment of the learned Chief Justice with which I agree, and have nothing to add.

Ruling accordingly.